



Center for Governmental Studies

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June 21, 2004

California Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: June 25, 2004 Meeting Agenda Item 17 (Adoption Discussion of Amended Regulations 18530.9 and 18531.10)

Dear Commissioners:

At your April 8 meeting, you discussed several draft regulations to address the threat of real or apparent political corruption posed by unlimited contributions to candidate-controlled ballot measure committees. To address this threat most directly and effectively, the Center for Governmental Studies (CGS) urges you to consider adoption of draft regulation 18530.9, which would enforce the contribution limits of Cal. Gov't Code §§ 85301 and 85302 "to any committee controlled by a candidate for elective state office that is established for the purpose of supporting or opposing state or local ballot measures."

In a letter addressed to the Commission and dated April 7, 2004, CGS discussed the constitutionality of proposed regulation 18530.9. For the sake of brevity, the discussion is not repeated here. The April 7 CGS letter is, however, attached for your review.

In short, application of the contribution limits established by Cal. Gov't Code §§ 85301 and 85302 to all candidate controlled committees is consistent with the statutory language and existing case law. The U.S. Supreme Court has consistently upheld reasonable limits on contributions to candidates as advancing the government's compelling interest in avoiding real or apparent corruption. The threat of real or apparent corruption depends entirely on a candidate's *receipt* of large contributions, not on a candidate's *use* of such contributions. To be certain, the Supreme Court has invalidated several limitations on ballot measure campaign financing. However, the limitations invalidated by the Supreme Court involved no threat of candidate corruption.

This letter addresses several issues not mentioned in the April 7 CGS letter. Specifically, this letter addresses the following issues:

- The shortcomings of Assembly Member Wolk's bill (AB 1980) as a means of reducing the threat of real or apparent corruption associated with large contributions to candidate controlled ballot measure committees;
- The shortcomings of proposed regulation 18531.10 as a means of reducing the threat of real or apparent corruption associated with large contributions to candidate controlled ballot measure committees; and

Commission authority to adopt proposed regulation 18530.9.

I. Wolk Bill (AB 1980)

In a memo dated May 24, 2004 from the Commission staff to the Commission, it is noted (fn. 3, p. 8) that the Commission has taken a "support" position with respect to AB 1980. Early drafts of AB 1980 would have imposed a \$21,200 limit on contributions to candidate controlled ballot measure committees.

AB 1980 was amended on May 26, however, to remove all language limiting contributions to candidate controlled ballot measure committees. The amended Wolk bill merely reaffirms existing state law by stating that "expenditures in support of a trustee's candidacy for elective state office or in opposition to a candidate running for the same elective state office are not within the due and lawful execution of the trust."

If adopted by the legislature, the Wolk bill would do nothing to reduce the threat of real or apparent corruption associated with large contributions to candidate controlled ballot measure committees. The Wolk bill only reaffirms the existing state law prohibition on the expenditure of ballot measure committee funds for communications that expressly advocate the election or defeat of candidates.

As mentioned above, the threat of real or apparent corruption associated with large contributions to candidate controlled ballot measure committees depends entirely on a candidate's receipt of such contributions, not on the candidate's expenditure of such contributions. Candidates have and will continue to avoid use of the "magic words" necessary to trigger the prohibition of the Wolk bill, while still spending unlimited campaign funds to advance a political agenda and/or increase the candidates' public visibility to improve prospects for future electoral success.

For this reason, the Commission's adoption of proposed regulation 18530.9 remains vital to preserving the integrity of California's campaign finance laws regardless of whether the state legislature adopts AB 1980.

II. Proposed Regulation 18531.10

CGS supports the Commission and staff in its efforts to clarify the implementation of Cal. Gov't Code § 85310 with proposed regulation 18531.10. Nevertheless, while CGS recognizes the value of proposed regulation 18531.10 and supports its adoption, CGS recognizes that proposed regulation 18531.10 will not effectively reduce the threat of real or apparent corruption associated with large contributions to candidate controlled ballot measure committees.

As with AB 1980, Cal. Gov't Code § 85310 and proposed regulation 18531.10 focus on a candidate or officeholder's expenditure rather than receipt of funds. Under proposed regulation 18531.10, Cal. Gov't Code § 85310 would only operate to limit contributions to candidate controlled ballot measure committees in a narrow set of circumstances. The \$25,000 contribution limit established by Cal. Gov't Code § 85310(c) would only take effect if the candidate controlled ballot measure committee made a payment of \$50,000

or more for a communication that clearly identified a candidate within 45 days of an election.

Sole reliance on this proposed regulation to avoid the threat of real or apparent corruption associated with large campaign contributions would allow officeholders to continue receiving unlimited contributions, so long as the candidate deposited these contributions into a ballot measure committee and avoided the trigger requirements described above.

Furthermore, the \$25,000 contribution limit triggered by Cal. Gov't Code § 85310(c) is far greater than the limits of Cal. Gov't Code §§ 85301 and 85302 for all offices other than governor.

For these reasons, while CGS supports the adoption of proposed regulation 18531.10, CGS urges the Commission to recognize the shortcomings of the regulation as a means of reducing the threat of real or apparent corruption associated with large contributions to candidate controlled ballot measure committees.

III. Proposed Regulation 18530.9

CGS urges the Commission to consider proposed regulation 18530.9 as the most effective means of reducing the threat of real or apparent corruption associated with large contributions to candidate controlled ballot measure committees. The application of the contribution limits established by Cal. Gov't Code §§ 85301 and 85302 to all candidate controlled committees is wholly consistent with the statutory language and existing case law. Adoption of a regulation clarifying this fact is fully within the authority of the Commission.

The Commission is empowered by Cal. Gov't Code § 83112 to adopt rules and regulations "to carry out the purposes" of the Political Reform Act. The Commission's adoption of proposed regulation 18530.9, applying the voter-enacted contribution limits enacted by Proposition 34 to candidate controlled ballot measure committees, would clearly further the purposes of Proposition 34.

California courts have consistently held that, "Absent ambiguity, [a court] presumes that the voters intend the meaning apparent on the face of an initiative measure" (*Lungren v. Superior Court of the City and County of San Francisco*, 14 Cal. 4th 294, 301 (1996). See also *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531, 543 (1990).)

Unambiguous Meaning of Proposition 34 Contribution Limits

Proposition 34 stated as its first declaration that "Monetary contributions to political campaigns are a legitimate form of participation in the American political process, *but large contributions may corrupt or appear to corrupt candidates for elective office.* (See Proposition 34 § 1(a)(1) (emphasis added).)

Proposition 34 went on to state, "The people enact the Campaign Contribution and Voluntary Expenditure Limits . . . to accomplish all of the following purposes: . . . To minimize the potentially corrupting influence and appearance of corruption caused by large contributions by providing reasonable contribution and voluntary expenditure limits." (See Proposition 34 § 1(b)(2).)

The language of Proposition 34 (Cal. Gov't Code §§ 85301 and 85302) limits the *receipt* of contributions by candidates for elective state office and makes no distinction based on a candidate's intended or eventual *use* of contributions.

Furthermore, "[w]here [a] statute is clear, courts will not 'interpret away clear language in favor of an ambiguity that does not exist.'" *People v. Frederick Henry Haykel*, 96 Cal. App. 4th 146, 150 (2002) (citing *Lennane v. Franchise Tax Bd.*, 9 Cal. 4th 263, 268 (1994)). CGS urges the Commission to adopt the clear meaning of Proposition 34's contribution limits. An interpretation that the Proposition 34 contribution limits are not applicable to candidate controlled ballot measure committees is inconsistent with both the stated purpose of the law and with the ordinary meaning of Proposition 34's language.

IV. Conclusion

The adoption of proposed regulation 18530.9 is fully within the scope of Commission's authority, constitutes an accurate and reasonable interpretation of Cal. Gov't Code §§ 85301 and 85302 and effectively advances the stated purposes of Proposition 34 relied upon by California voters who enacted these contribution limits in 2000. For these reasons, CGS urges you to consider proposed regulation 18530.9.

Sincerely,



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Enclosure



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April 7, 2004

California Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: April 8, 2004 Meeting Agenda Item 16 (Cal. Gov't Code §§ 85301, 85302 and Draft Regulation § 18530.9)

Dear Commissioners:

Unlimited contributions to candidate-controlled ballot measure committees pose a serious threat of real or apparent political corruption which undermines democratic governance in the State of California. For this reason, the Center for Governmental Studies urges you to seriously consider draft regulation § 18530.9 to enforce the contribution limits of Cal. Gov't Code §§ 85301 and 85302 "to any candidate controlled committee established by a candidate for elective state office for the purpose of supporting or opposing state or local ballot measures."

Application of the contribution limits established by Cal. Gov't Code §§ 85301 and 85302 to all candidate controlled committees is consistent with the statutory language and existing case law. The statutory language limits contributions to candidates for elective state office and makes no distinction based on a candidate's intended or eventual use of such contributions.

Likewise, the U.S. Supreme Court has consistently upheld reasonable limits on contributions to candidates as advancing the government's compelling interest in avoiding real or apparent corruption. The threat of real or apparent corruption depends entirely on a candidate's *receipt* of unlimited contributions, not on a candidate's *use* of such contributions. To be certain, the Supreme Court has invalidated several limitations on ballot measure campaign financing. However, the limitations invalidated by the Supreme Court involved no threat of candidate corruption.

Limitations on Contributions to Candidates

In *Buckley v. Valeo*, 424 U.S. 1, 23-38 (1976), the U.S. Supreme Court upheld limits on contributions from individuals (\$1,000) and political action committees (\$5,000) to federal office candidates on the ground that such limits were a valid means of avoiding real or apparent political corruption. The Court has consistently reaffirmed this decision regarding the constitutionality of limits on contributions to candidates. Most recently, in *McConnell v. FEC*, 124 S.Ct. 619 (2003), the Court upheld the federal law limits on contributions to federal candidates and officeholders found in Bipartisan Campaign Reform Act (BCRA) § 323(e) (2 U.S.C. 441i(e)(1)(B)).

Several months before the *McConnell* decision, the Federal Election Commission (FEC) opined that where a federal candidate/officeholder controls a state ballot measure committee, both the committee and the federal candidate are subject to the federal contribution limits. See FEC AO # 2003-12 (Re: U.S. Representative Flake and the *Stop Taxpayer Money for Politicians Committee*). The FEC implied, while noting that the question had not been presented to the Commission for opinion, that where a federal candidate/officeholder fundraises for a state ballot measure committee but does not control the committee, the committee would not be subject to the limits of BCRA, but fundraising activities by the candidate/officeholder on behalf of the committee would be subject to the BCRA limits.

Despite the FEC's interpretation of the BCRA § 323(e) to limit fundraising by federal candidates for candidate controlled state ballot measure committees, the *McConnell* Court made no mention of this issue in its opinion. Eight of the nine *McConnell* Justices, however, upheld the BCRA contribution limits against constitutional challenge.

Limitations on Contributions to Ballot Measure Committees

The Supreme Court has issued two decisions analyzing the constitutionality of limits on contributions to ballot measure committees. In *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 795 (1978), the Court invalidated a Massachusetts law prohibiting contributions and expenditures by business corporations "for the purpose of . . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation." The Court reasoned, "[r]eferenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." *Bellotti*, 435 U.S. at 790.

Three years later, in *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 298-300 (1981), the Court invalidated a \$250 limit on contributions to committees formed to support or oppose ballot measures, quoting the *Bellotti* language above.

The contribution limits invalidated in *Bellotti* and *Citizens Against Rent Control* had no relationship to candidate fundraising and thus were not narrowly tailored to the government's compelling interest in avoiding the real or apparent corruption of candidates for public office. This simple fact distinguishes the contribution limits invalidated in *Bellotti* and *Citizens Against Rent Control* from FPPC draft regulation § 18530.9, which would apply only to candidate controlled ballot measure committees.

Conclusion—FPPC Draft Regulation § 18530.9 is Constitutional Under *Buckley*, *Bellotti*, *Citizens Against Rent Control* and *McConnell*

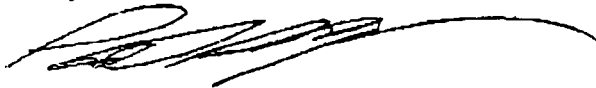
The Supreme Court's decisions in *Bellotti* and *Citizens Against Rent Control* depended entirely on its assumption that the "risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." Although this assumption was valid at the time the Court decided *Bellotti* and *Citizens Against Rent Control*, the assumption is not valid in California today. Instead, the risk of corruption

perceived in cases involving candidate elections is equally present in cases involving candidate controlled ballot measure committees.

Buckley and its progeny clearly establish that reasonable limits on contributions to candidates are a constitutional means of reducing the threat of real or apparent corruption. The threat of real or apparent corruption associated with large contributions to candidates is entirely dependent on a candidate's receipt of the contribution—not on a candidate's use of the contribution.

For these reasons, the Supreme Court would likely uphold against constitutional challenge the application of candidate contribution limits to candidate controlled ballot measure committees. Such a decision would be wholly consistent with the Court's decisions in *Buckley*, *Bellotti*, *Citizens Against Rent Control*, *McConnell* and other contribution limit cases. The Center for Governmental Studies urges you to consider proposed draft regulation § 18530.9.

Sincerely,



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